

If the Commission does not wish to conduct a cost proceeding, it should rely on the existing leased access rates for cable channels, a procedure that has been fully litigated and implemented.

- ♦ In this approach, the maximum rate for ISP use of 6 MHz of spectrum should be set at the maximum implicit price paid by any entity for leased access to 6 MHz of spectrum for the delivery of cable programming.

If the Commission is unwilling to conduct a cost proceeding or to rely on the existing rates for spectrum under the leased access proceeding, then the rates must be set based on publicly available retail rates.

- ♦ In this approach, rates should be set as a percentage of the lowest price for broadband Internet service offered to the public, not to exceed \$10 per month.

This approach sets a ceiling that is reasonable⁹ and serves two purposes that are critical to nondiscriminatory access and fair competition.

By basing the rate on a publicly available price, it accomplishes transparency and prevents discrimination between ISPs. Secrecy is the cornerstone of discrimination, as the recent Time Warner Term Sheet demonstrates.

By basing the rate on the lowest available retail price, this approach limits obvious price squeezes. If the Commission allows the network owners to set a price without reference to the lowest price charged to the public, the network owner/operator can immediately squeeze competition by lowering its retail price. The Time Warner Term Sheet, which established a high floor price for some classes of customers was a blatant invitation to price squeeze. We have already had disputes about price squeeze in for DSL service and resold telephone service.

BUSINESS RELATIONSHIPS

Although Interconnection is a technical matter that can be effectuated by joining two wires in a router at the head-end, there are inevitably other ways in which the customer will have to interact with both the cable network owner and the Internet service providers. The Commission must ensure that network owners treat ISPs in a nondiscriminatory and competitive neutral manner in these business relationships.

For example, as cable TV and Internet services are provided over the same network, the customer is likely to encounter a network boot screen in which the customer chooses the type of service and the service provider for the individual session. ISPs must be treated fairly on that boot screen. The customer will then click to the home page of the ISP. That home page must be under the control of the ISP. All activities and transactions conducted through that home page are the business of the ISP, not the network operator. The Time Warner Term Sheet is blatantly anti-competitive in its proposed controls on the business of

independent ISPs that have no relationship whatsoever to interconnection and network management.

- ◆ ISPs should receive fair treatment on the network boot screen.
- ◆ ISPs should control their home page and all transactions conducted through that home page.
- ◆ Other than information necessary for billing purposes, information generated in the course of doing business with the customer belongs to the customer or the ISP (subject to privacy policy), not to network operator.

Beyond the question of the boot screen and home page, in the Time Warner Term Sheet and the AT&T MindSpring letter before it, cable owners seek to usurp control of the customer from the ISP.

- ◆ ISPs should control their own privacy, Digital Millenium Copyright Act and customer termination policies.

CONCLUSION

The Internet has proven to be a dramatic engine of economic and technological progress in the U.S. precisely because it unleashed the dynamic forces of competition in our economy. The cornerstone of that competition was direct access to the customer over networks that were operated in an open, non-discriminatory manner. For thirty years, innovators and entrepreneurs were freed from the straight-jacket of a monopoly network by vigorous policies to prevent network control from being used to serve the strategic interests of the network owner.

That freedom to innovate is at risk in this merger and on the broadband Internet in general. The intention of the new network monopolists to use their ownership of the communications facilities to defend their market power over cable and extend it to the broadband Internet is abundantly clear in the Time Warner Term Sheet and the AT&T MindSpring letter. In the case of the AOL Time Warner merger, the leverage being exercised is reinforced by the pervasive vertical integration into content. The Commission must act, immediately, to restore the policy of openness that has served the nation so well by requiring open access as a condition of the merger.

END NOTES

¹ America Online Inc., "Open Access Comments of America Online, Inc.," before the Department of Telecommunications and Information Services, San Francisco, October 27, 1999 (hereafter, AOL).

² Time Warner currently charges \$39.95 for broadband Internet service to cable customers, leaving, at most a \$9.95 margin for the unaffiliated ISP if it wants to remain price competitive. If Time Warner drops its price, the unaffiliated ISP would have an even smaller margin. Time Warner charges \$50 for broadband service for non-cable customers. This gives the unaffiliated ISP a margin of \$12.49 ($.25 \times \49.95) to work against.

³The Circuit Court ruling in *AT&T Corp. v. City of Portland*, No. 99-35609, 2000 U.S. App. LEXIS 14383 (9th Cir. June 22, 2000) makes it clear that, consistent with the basic/enhanced service approach, one must look separately at the network and the services provided over the network.

Under the statute, Internet access for most users consists of two separate services. A conventional dial-up ISP provides its subscriber access to the Internet at a "point of presence" assigned a unique Internet address, to which the subscribers connect through telephone lines. The telephone service linking the user and the ISP is classic "telecommunications," which the Communications Act defines as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or the content of the information as sent and received." A provider of telecommunications services is a "telecommunications carrier," which the Act treats as a common carrier to the extent that it provides telecommunications to the public, "regardless of the facilities used..."

ISPs are themselves users of telecommunications when they lease lines to transport data on their own networks and beyond on the Internet backbone. However, in relation to their subscribers, who are the "public" in terms of the statutory definition of telecommunications service, they provide "information services," and therefore are not subject to regulation as telecommunications carriers. Like other ISPs, @Home consists of two elements: a pipeline (cable broadband instead of telephone lines), and the Internet service transmitted through that pipeline. However, unlike other ISPs, @Home controls all of the transmission facilities between its subscribers and the Internet. To the extent @Home is a conventional ISP, its activities are one of an information service. However, to the extent that @Home provides its subscribers Internet transmission over its cable broadband facility, it is providing a telecommunications service as defined in the Communications Act.

Among its broad reforms, the Telecommunications Act of 1996 enacted a competitive principle embodied by the dual duties of nondiscrimination and interconnection. See 47 U.S.C. s. 201 (a) 251 (A) (1)... Together, these provisions mandate a network architecture that prioritizes consumer choice, demonstrated by vigorous competition among telecommunications carriers. As applied to the

Internet, Portland calls it "open access," while AT&T dysphemizes it as "forced access." Under the Communications Act, this principle of telecommunications common carriage governs cable broadband as it does other means of Internet transmission such as telephone service and DSL, "regardless of the facilities used."

Even if the Commission is not ready to embrace the proposition that the cable "pipeline" is a telecommunication facility, the essential point is that policy of open telecommunications networks, including the mandate for nondiscriminatory interconnection pursuant to ONA/CEI is what has largely allowed the "narrowband" Internet to be as vibrant and competitive as it is today. It is hard to see how closed cable networks can obtain the same result in a broadband environment.

⁴ As AOL explained in San Francisco

The City's critical and appropriate role is to establish and firmly embrace a meaningful open access policy, not to manage the marketplace. We believe that once such a policy is fully in place, the industry players will negotiate the details to fairly implement open access. The City thus should not have to play an active role in enforcing non-discriminatory pricing or resolving pricing disputes. Rather, the City should simply adopt and rely on a rule that a broadband provider must offer high speed Internet transport services to unaffiliated ISPs on the same rates as it offers them to itself or its affiliated ISP(s). The City's unequivocal commitment to this policy and the resulting public spotlight should offer enforcement enough, and indeed we expect that cable operators will adjust their ways readily once they understand that a closed model for broadband Internet access will not stand. When necessary, the opportunity to seek injunction or bring a private cause of action would offer a fallback method of obtaining redress...

As stated above, the City's role is to establish a comprehensive open access policy with an effective enforcement mechanism. Network management issues are best left to the industry players, and the City need not play a hands-on role in this area. The companies involved are in the best position to work out specific implementation issues. This is not to say, however, that a reluctant provider would not have the ability to interfere with the successful implementation of an open access regime. Accordingly, through its enforcement policy if necessary, the City should ensure that the necessary degree of cooperation is achieved. (AOL, pp. 4-5).

⁵ AOL made the following argument in San Francisco.

Non-discrimination requirements: Franchisee shall immediately, with respect to this franchise, provide any requesting Internet Service Provider access to its broadband Internet transport services (unbundled from the provision of content) on rates, terms and conditions that are at least as favorable as those on which it provides such access to itself, to its affiliates, or to any other person. Such access shall be provided at any point where the Franchisee offers access to its affiliate. Franchisee shall not restrict the content of information that a consumer may receive over the Internet...

Of course, it is implicit in the open access resolution that non-discriminatory access for multiple ISPs extends to all relevant aspects of the technical and operational infrastructure, so that all business system interfaces will be open to all ISPs and performance levels will not favor the affiliated ISP. (AOL, p. 7)

Access: The term "access" means the ability to make a physical connection to cable company facilities, at any place where a cable company exchanges consumer data with any Internet service provider, or at any other technically feasible point selected by the requesting Internet service provider, so as to enable consumers to exchange data over such facilities with their chosen Internet service provider (AOL, p. 2).

Broadband Internet Transport Services- The term "broadband Internet access transport services" means broadband transmission of data between a user and his Internet service provider's point of interconnection with the broadband Internet access transport provider's facilities. (AOL, p. 3)

⁶ There are at least three possible network designs that allow for open access. These include:

policy-based routing, which routes packets to the appropriate ISP using the source IP address as the unique identifier;

virtual private networks (VPNs) and IP tunnels, which create virtual dedicated connections over the HFC network between the customer and the ISP (a solution appropriate to routed (layer 3); and

Point-to-Point Protocol over Ethernet (PPPoE) encapsulation, which is a protocol analogous to commonly employed designs for dial-up (a solution appropriate to bridged (layer 2) access networks).

Each of these options has its own unique set of advantages and disadvantages. The appropriateness of each option varies depending on the type of cable system (i.e. large or small, multiple nodes vs. single node) and the networking architecture being addressed. (AOL, p. 7-8)

It is important to confirm that the cable operator must provide equal treatment for local content serving (caching or replication) that the affiliated and nonaffiliated ISPs can provide, specifically, no firewalls, protocol masking, extra routing delays or bandwidth restrictions may be imposed in a discriminatory manner. (AOL, p. 9)

⁷At the federal level, AOL's most explicit analysis of the need for open access can be found in "Comments of America Online, Inc.," *In the Matter of Transfer of Control of FCC Licenses of MediaOne Group, Inc. to AT&T Corporation*, Federal Communications Commission, CS Docket No. 99-251, August 23, 1999

What this merger does offer, however, is the means for a newly "RBOC-icized" cable industry reinforced by interlocking ownership relationships to (1) prevent Internet-based challenge to cable's core video offerings; (2) leverage its control over essential video facilities into broadband Internet access services; (3) extends its control over cable Internet access services into broadband cable Internet content; (4) seek to establish itself as the "electronic national gateway" for the full and growing range of cable communications services. (AOL, FCC, p.4)

A similar sentiment was expressed in the comments in San Francisco

In a last mile shared environment, proper network and bandwidth management might possibly require certain limitations on data transmission. However, content- or service-specific restrictions can be both over- and under-inclusive – and most of all, anti-consumer. Limitations on video streaming, for example, protect cable's traditional video programming distribution business. TCI admitted early on, its 10-minute cap is a "restriction which we imposed on @Home so that we were the determiner of how stream video works in our world... [and] so that [we] determined [our] future in the area of streaming video." Any legitimate network management policies must be free of such anti-competitive intent and effect. (AOL, p. 10)

⁸ The Internet's protocols themselves manifest a related principle called "end-to-end": control lies at the ends of the network where the users are, leaving a simple network that is neutral with respect to the data it transmits, like any common carrier. On this rule of the Internet, the codes of the legislator and the programmer agree.

⁹ The \$10 figure would seem to be a reasonable estimate of the network costs attributed to Internet service in cable company pricing. Cable operators charge \$40 for Internet service when it is bundled with cable TV service, but \$50 when it Internet service is purchased on a stand alone basis. Basic cable TV rates are about \$30 per month, of which about \$12 is EBDITA, available for servicing fixed network costs.

**AOL/Time Warner's Words and Deeds about Open Access
And
NorthNet's Anecdotal Dealings with Time Warner**

1. **August 23, 1999. Open Access comments of AOL to FCC about AT&T/MediaOn merger**
2. **August 26, 1999. Stephen Heins, Director of Marketing fo NorthNet visited the NE Wisconsin regional office for Time Warner. He requested information about access and the name of the person responsible. He was told no one was yet in charge of the Road Runner program. He was told to call back in a few months.**
3. **October, 1999. AOL release their 5.0 software. Other ISPs discover that the new software some anti-competitve features that are now being litigated.**
4. **October 27, 1999. Open Access comments of AOL in front of Department of Telecommunication and Information Services, San Francisco, CA.**
5. **November, 1999. Time Warner refuses competing ISP advertising in Syracuse, NY.**
6. **November 15, 1999. Stephen Heins of NorthNet again stopped at NE Wisconsin regional office for Time-Warner. He was told to call back after the first of the new year.**
7. **December, 1999. AT&T and Mindspring (now Earthlink) deliver letter to FCC Chairman William Kennard outlining AT&T's "commitment to allow consumers to choose their Internet Service Providers.**
8. **January 10, 2000. AOL announces the merger of AOL and Time-Warner with some comments from Steve Case about still supporting Open Access to cable.**
9. **January 11, 2000. CNET News' headline screams, "AOL Aims to Continue Open Access Fight." AOL's George Vradenburg made what was called "a necessary call" to state that "we are going to offer broadband access across the country."**
10. **January 12, 2000. Stephen Heins stopped up to Time-Warner regional office to discuss cable access with the appropriate representative. Again, he was told Time-Warner did not have anyone with whom he could talk,**
11. **January 26, 2000. Stephen Heins of NorthNet again stopped at Time Warner regional office. No one would talk to him.**

- 12. February 29, 2000. AOL and Time Warner announce their merger and the Memorandum of Understanding, which was a general principles statement about Open Access.**
- 13. March 6, 2000. Stephen Heins of NorthNet stopped again at Time Warner regional office for information about Time Warner's plans for Open Access based upon MOU. No one would meet with me him at that time.**
- 14. March 22, 2000. Stephen Heins of NorthNet stopped again at Time Warner with the same results: None.**
- 15. March 27, 2000. Stephen Heins of NorthNet sent e-mail to Time Warner Marketing Director, Barbara Hubert, requesting information or at least a written denial of his request.**
- 16. March 28, 2000. The Appleton (WI) Post Crescent ran a story written by Stefanie Scott about Time Warner's Road Runner. In it, she asked Barb Hubert about Open Access for area ISP's, whereby Ms. Hubert said, "Cable is private property. That is our property. So to demand that they belong on our wires is essentially seizing our property."**
- 17. April 4, 2000. Stephen Heins of NorthNet sent another e-mail to northeastern Wisconsin Time Warner's Marketing Director Barbara Hubert with the Post Crescent article attached.**
- 18. April 11, 2000. Barbara Hubert, Marketing Director for NE Wisconsin office of Time Warner finally responded to Mr. Heins' e-mails, etc. In her e-mail, Ms. Hubert stated that "At this time, we do not have any further information on how this will work out and are referring any inquiries to our corporate office. Your previous calls have been forwarded to the appropriate people at our corporate office, as well."**
- 19. May 1, 2000. Stanley Miller, personal technology for the Milwaukee Journal wrote an article about Time Warner's rollout of Road Runner services in Milwaukee area, sub-titled "Time Warner announcement sets up potential ISP battle." In it, Time Warner representatives said, "they would open their systems after the merger..." Also, Mike Luftman, VP of corporate communications at Time Warner's headquarter in New York said, "Let's give the marketplace time to work. There is no problem yet."**
- 20. May 1, 2000. Barry Orton, a professor of telecommunications at UW-Madison and advisor to approximately 30 cities in Wisconsin for cable franchise agreements, states in the above-mentioned Milwaukee Journal article said, "For small ISPs, open access is a matter of life and death, and I think it's going to be death."**

- 21. May 1, 2000. Time Warner kicks ABC/Disney off of 11 cable markets during a negotiation dispute.**
- 22. June 3, 2000. Frank Rich, New York Times writer, said "There is nothing to stop one of these new megaliths [in this case, AOL/Time-Warner] from exerting a larger and more surreptitious chokehold on all electronic services that their cable wires will speed by the bundle into our homes...."**
- 23. June 6, 2000. Stephen Heins stopped at Time Warner regional office to speak to Barbara Hubert. Mr. Heins was told she was on vacation. He asked to speak to the person incharge of T-W Road Runner service and he was told that she was out to lunch. Pressing further, Mr. Heins for her name and he was told the woman's first name. When asked for her last name, he was told that it was company policy not to disclose her last name.**
- 24. June 7, 2000. AT&T announces Open Access testing will begin in November on its cable system in Boulder, Colo. The participants named are America Online, Earthlink, Juno, and RMI.net.**
- 25. June 23, 2000. Ninth Circuit Court announces decision in the AT&T v. City of Portland case. In a two part decision, (1) the Court said that cities could not dictate a pre-conditioned Open Access to AT&T; and, (2) High Speed Internet access over cable was a "telecommunication service."**
- 26. July, 2000. AOL/Time Warner announces preliminary agreement with the third largest ISP, Juno. The details have not been settled.**
- 27. July 29, 2000. Gerald Levin, President of Time-Warner, invites ISPs to apply for access to TimeWarner cable lines.**
- 28. August 1, 2000. After reading Mr. Levin request for ISPs, NorthNet sends another e-mail asking for access information.**
- 29. August 2, 2000. NorthNet finally receives a copy of a request for information from Time Warner's Bonnie Blecha in their Stamford, CN headquarters.**
- 30. August 11, 2000. Another Wisconsin ISP receives a copy of Time Warner Term Sheet. After review by recipient and Stephen Heins, they identified the remarkable depth of the anti-competitive features to the Term Sheet.**
- 31. September 29, 2000. David Baker, VP of Law for Earthlink/Mindspring, complains to Federal Trade Commission Chairman Robert Pitofsky and later the Washington Post, about "terms extended by Time Warner to would-be ISP partners."**

32. October 4, 2000. Stephen Heins of NorthNet delivers a copy of the Time Warner Term Sheet to the FTC and its staff.
33. October 5, 2000. FTC Chariman Robert Pitofsky states that the AOL/Time Warner deal would be approved in January. "But," he said, "Open Access should be imposed if competing companies have no other means of getting to the customer of the company in question."
34. October 5, 2000. Stephen Heins of NorthNet tries to deliver a copy of Time Warner Term Sheet to the FCC. The FCC official requested that Mr. Heins send an Ex Parte filing with the Term Sheet attached.
35. October 5, 2000. ISP World's Michael Robuck reports that "Time Warner Shows New Interest in Open Access Term Sheet."
36. October 6, 2000. Stephen Heins mails the Ex Parte filing with Term Sheet from Washington, DC to the FCC.
37. October 10, 2000. Stephen Heins sends an open letter to Chairman Pitofsky of the FTC and Chairman Kennard of the FCC, whereby he discusses the anti-competitive details of the Term Sheet. Mr. Heins also sends a press release/abstract of the open letter to the media.
38. October 13, 2000. ISP World's Michael Robuck reports that "Juno Still Negotiating to Get on Time Warner's Cable System."
39. October 14, 2000. Alec Klein, Washington Post Staff Writer, reports that "Federal Trade Commission attorneys are preparing court documents to block America Online Inc.s' takeover of Time Warner Inc...."
40. October 18, 2000. RMI.net has signed to test multiple-company inter-operability for competing ISPs in Columbus, Ohio.
41. October 19, 2000. ISP World's Michael Robuck reports that RMI.net and President Douglas Hanson is highly critical of the Time Warner Term Sheet being sent to ISPs in spite of being chosen for inter-operability tests in Columbus, OH.
42. October 19, 2000. Stephen Heins of NorthNet, Douglas Hanson of RMI.net, Gene Crick, Executive Director of the Texas ISP Association, and David Robertson Vice President and General Manager of STIC.net have a conference call with FCC Chairman Kennard and his staff. The ISPs spokesmen are asked to file an Ex Parte summary of the conference call. In addition, the ISP spokesmen were asked to file another Ex Parte about their ideas on an "Open Access Business Model."

43. **October 19, 2000.** In an article by the Washington Post's Alec Klein, Steve Case stated that AOL is ready for the AOL/Time-Warner merger and that "we don't believe conditions are necessary or appropriate."
44. **October 23, 2000.** Stephen Heins makes an Ex Parte filing on a summary of his comments during the FCC conference call: In which, Mr. Heins stated that the current hands-off policy of the FCC was threatening the very existence of all ISPs.
45. **October 25, 2000.** AOL announces their new 6.0 software, which is even more intrusive than 5.0. With the AOL's 6.0, their subscribers cannot change their boot screen from the AOL homepage, besides the on-going problem related to a subscriber switching to another Internet provider. Another lawsuit is currently being spawned.
46. **October 30, 2000.** Stephen Heins sends an Ex Parte filing to the FCC. The filing entitled "An Open Access Business Model for Cable Systems: Promoting Competition and Preserving Internet Innovation on a Shared, Broadband Communication Network."
47. **November 1, 2000.** Stephen Heins makes another Ex Parte filing with the FCC. In it, he details his own experience trying to contact Time-Warner's northeastern Wisconsin regional office for access information; and, at the same time, he details the public pronouncements of both AOL and Time-Warner during the same fifteen month period, entitled: "An Anecdotal Review of AOL/Time Warner's Words and Deeds."

CABLE SERVICE

SECTION 3. SCHEDULE OF RATES AND CHARGES (cont'd)

2.27 (cont'd)

8. OWNERSHIP AND USE OF EQUIPMENT AND SOFTWARE

8.1 The cable modem supplied and installed under the Tariff and Service Agreement shall at all times remain the property of Adelphia and it must be returned to Adelphia in good condition (defined as reasonable wear and tear) at the termination of service. Subscriber shall use reasonable care to avoid damaging it, and will not move, relocate, alter, sell, lease, assign, encumber or otherwise tamper with the equipment. If the equipment is not returned to Adelphia in good condition (defined as reasonable wear and tear) upon termination of service, Subscriber will be charged and agrees to pay a fee of \$250.00.

8.2 Adelphia grants you a limited, non-exclusive license to use the software provided and installed by Adelphia for use in connection with the Service only. You may make one copy for archival purposes only. The license terminates upon termination of the Agreement, disconnection or discontinuance of the Service. Upon termination, discontinuance or disconnection, you will promptly destroy all such software and any copies you have made.

9. CUSTOMER USE

9.1 The Service is a service for home and family use. Subscriber may publish only personal home pages on Adelphia's web hosting service. Business orientated Web pages are prohibited. A business orientated page is described as any page that advertises, promotes, markets or disseminates information about products or services including but not limited to the use of phone numbers, addresses, product description, etc. for the purpose of generating a product inquiry. Adelphia, at its sole discretion, reserves the right to suspend or cancel, without notice, user accounts for misuse related to the above. **Subscribers agree not to use the service as an Internet service provider. Subscribers may not resell or redistribute access to the Service in any manner. Residential customers agree not to use the service for commercial ventures of any nature.**

9.2 Subscribers may not use the Service, including but not limited to the equipment and software provided by Adelphia, for any illegal purpose, or to achieve unauthorized access to any computer systems, software, data, or other copyright or patent protected material. Subscriber may not copy, distribute or sublicense any software provided by Adelphia except that Subscriber may make one copy of each software program for back-up or archival purposes only. Excessive data transfer may interfere with the experience of other users. Subscribers may not interfere with their use of the equipment or services by other Customers or disrupt the Adelphia backbone network nodes or network services. Violation of any part of the Tariff or Service Agreement are grounds for termination. Subscribers may not exceed 2.5GB of traffic in a one-month period, which is defined as excessive data transfer.

9.3 Upon disconnection, discontinuance or termination of the Service, Subscriber must delete the software files provided by Adelphia from their computers.

ISSUED: November 17, 1999 EFFECTIVE: December 1, 1999

BY: Mountain Cable Company
A Vermont Limited Partnership

BY: Randall D. Fisher
Vice President and General Counsel
Pericles Communications Corporation
Managing General Partner

CABLE SERVICE

SECTION 3. SCHEDULE OF RATES AND CHARGES (cont'd)

2.27 (cont'd)

9.4 For "One Way" Power Link Customers "Camping" on the system is prohibited. While Adelphia's regular monthly Service is unlimited, meaning Subscribers are free to connect at any time, it is not a dedicated connection. When Subscribers are not actively using the system, Subscribers must disconnect to ensure that connections are available for other system users. Utilization detection programs are used to ensure that customers are not using automated programs just to keep the connection viable. In these circumstances, discontinuance of the connection will be made. If such activity continues, Adelphia may terminate the service in accordance with Vermont Public Service Board Rules 8.34.

9.6 Activities which are prohibited as potentially illegal or improper behavior include, but are not limited to: Unauthorized copying of copyrighted materials including, but not limited to, digitization and distribution of photographs from magazines, books or other copyrighted sources and copyrighted software. Exporting software or technical information is in violation of US export control laws. Posting or e-mailing of scams such as "make money fast" schemes, harassing others by "Mail bombing" or "news bombing". "Mail-bombing" constitutes sending more than ten (10) similar email messages to the same email address. "News-bombing" constitutes sending more than 10MB of data to a newsgroup. Posting or listing articles which are off-topic according to the description of the group or list or sending unsolicited e-mail to e-mail users, if such unsolicited mailings provoke complaints from any other recipients. Forging any message header, in part or in whole, of any electronic transmission, originating or passing through Adelphia services. Distributing viruses to or from Adelphia systems. Exceeding 2.5GB of traffic on a one-month period.

9.7 With One-way Power Link service Adelphia may disconnect a connection after fifteen (15) minutes of inactivity as detected by Adelphia through electronic means as detailed in Section 9.4 of this tariff.

9.8 Adelphia may review violations of this Tariff and Service Agreement on a case by case basis; however, violation of any part of this Tariff may be grounds for termination of Service. Upon a violation of the Tariff and Service Agreement, including rogue servers, Adelphia may discontinue Subscriber's purchase of the service.

10. CUSTOMER INFORMATION AND PRIVACY:

10.1 Privacy interests, including your ability to limit disclosure of certain information to third parties, are safeguarded by the subscriber privacy provisions of the 1984 Cable Act, as amended. Your rights under the Cable Act, and the High Speed Data and Internet Access Service's privacy practices, are described in the **Subscriber Privacy Notice**, which is attached hereto and is incorporated by reference.

11. LIMITATION OF LIABILITY: NO WARRANTIES:

11.1 Damage to your Computer

Except in cases of gross negligence, Adelphia assumes no responsibility for any damage, loss or destruction of Subscribers computer. In no event shall Adelphia's maximum liability for such damage, loss or destruction exceed \$1,500.00.

11.2 Damage, Loss or Destruction of Software Files and/or Data

Adelphia assumes no responsibility whatsoever for any damage to or loss or destruction of any of your software, files, data, or peripherals which may result from your use of the Service, or from the installation, maintenance, or removal of the service, equipment or software. Adelphia does not warrant that any data or files sent by or to you will be transmitted in uncorrupted form or within a reasonable period of time.

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BY: Mountain Cable Company
A Vermont Limited Partnership

BY: Randall D. Fisher
Vice President and General Counsel
Pericles Communications Corporation
Managing General Partner





Media giants' Net change Major companies establish strong foothold online

USA Today; Arlington; Dec 14, 1999; David Lieberman;

Abstract:

Those listening carefully at the PaineWebber Annual Media Conference here last week noticed that an important shift took place in 1999 in the way media giants approach the Internet.

This time last year, executives assured analysts that their companies had Web ventures. But those were clearly ancillary businesses put in place to protect the mother ship in case the Internet did, indeed, become an important -- and lucrative -- media force.

At last week's gathering, though, companies such as Time Warner, Walt Disney's go.com, Seagram, News Corp., Viacom and USA Networks had a different message. Not only are they deeply into the Internet, they've integrated it into virtually everything they do. "It's a 180- degree turn," PaineWebber's Christopher Dixon says. "We're at the beginning of a new marketing age. This is no longer a dot-com world of kids sitting around Silicon Alley, eating pizzas and using upside- down trash cans as desks."

Full Text:

Copyright USA Today Information Network Dec 14, 1999

NEW YORK -- Those listening carefully at the PaineWebber Annual Media Conference here last week noticed that an important shift took place in 1999 in the way media giants approach the Internet.

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What accounts for the change? In a strange way, Internet companies have given old-timers financial freedom to rush into the new world by advertising on established media.

Dot-com ads on network TV have grown "from virtually nothing in 1998 to several hundred million dollars in 1999," CBS' David Poltrack says.

The buying spree will contribute to a 9% increase in national advertising in 2000, to \$139 billion, says Universal McCann's Robert Coen.

But executives aren't spending heavily in new media simply because they're flush with cash. They also believe these are safe investments that will eventually become profitable.

Seagram CEO Edgar Bronfman, who's trying to find a piracy-free way to sell music online, says he's not worried that performers will use popular technologies such as MP3 to sell songs directly to fans.

"It's not secure," he says. "Artists don't like MP3. Artists like to be paid for their work."

And others say that the marketing firepower of existing media, plus their strong balance sheets, will make it impractical for upstarts to take the Internet by storm.

"You can't avoid something the Walt Disney Co. is offering on any given day," says go.com President Steve Wadsworth. "It's almost impossible. And we're trying to integrate the Internet into that."

USA Networks CEO Barry Diller also sees an end coming to the Internet's frontier days. "If we do our work well," he says, "in a couple of years the barriers to entry for those who want to enter the local (information and e-commerce) world will be high."

Some companies are leaving little to chance. For example, AT&T Broadband & Internet Services CEO Daniel Somers says he won't allow others to freely transmit movies and TV shows via his company's high-speed Internet connections.

AT&T didn't spend \$56 billion to get into the cable business "to have the blood sucked out of our vein," he says.

But it may be beyond the ken of even an AT&T to completely control the Internet's course.

"Those trying to protect the traditional revenue streams will get hurt," Dixon says. "This is an extraordinary market force, the need for information and to be entertained."

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Latest News

December 6 1999

Chairman William E. Kennard
Federal Communications Commission
445 Twelfth Street SW, Room 8-B201
Washington, DC 20554

Dear Chairman Kennard:


Thank you for suggesting that MindSpring, AT&T and other parties get together to discuss how consumers might enjoy open high speed internet access over cable using the Internet Service Provider (ISP) of their choice.

As we have outlined in our accompanying letter, AT&T has committed to allow multiple ISP's to negotiate access to their cable systems and to allow consumers to choose their ISP if they wish to access the internet using a cable connection.

While this commitment is an important Map to the right direction, it is only a first step. While we sincerely appreciate the open access commitments which AT&T is making, they will not take effect until their current exclusive arrangements with affiliated companies such as Excite@Home expire currently met for mid-2002. Open access should become a reality sooner rather than later. This benefit to consumers should not be delayed. We continue to challenge the validity of these exclusive contracts. They should not be allowed to delay the implementation of open access by even a single day.

Also, while this letter of intent establishes an important principle that AT&T will not unreasonably discriminate in favor of affiliated ISP's like Excite@Home over unaffiliated ISP's they could still impose constraints such as limitations on video streaming or IP telephony on all users of their system. While there are no doubt certain engineering constraints inherent to cable systems, these should be approached as challenges to be overcome not limitations to be imposed on high speed internet access over cable. ISP's should be able to offer, and consumers should be able to enjoy, the full functionality and promise of the Internet.

We hope that the Commission and other federal policy makers will grasp the opportunity that this initial agreement creates, because only clear and unambiguous federal policy can make the promise of this first step real, enforceable and timely. Otherwise today's agreement may not benefit consumers for years to come. We again respectfully request that the FCC



initiate a proceeding to address these issues on a comprehensive basis. In setting out public policy principles, the FCC would establish the "rules of the road" that would help ensure fair workable and enforceable agreements between parties

As an example, although Digital Subscriber Line (DSL) service over phone lines is already an open platform, the Commission just recently took further steps help ensure that data CLEC's can deploy these lines on an equal footing with incumbents, for the benefit of consumers. We believe the Commission should apply this same procompetitive mindset to policy making regarding a cable lines.

We sincerely appreciate the time and effort that Mr. Cicconi, Mr. Fellman and others have devoted to these discussions, and we hope that they will culminate in real choice for consumers in high speed internet access over cable. Thank you again for your thoughtful consideration of these matters. As always if you have any comments or questions, or if I may be of further service to you, please do not hesitate to contact me.

Sincerely,

Dave Baker
VP, Legal and Regulatory Affairs
Mindspring Enterprises, Inc.

Cc:

Commissioner Ness
Commissioner Furchgott-Roth
Commissioner Powell
Commissioner Tristani

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December 6, 1999

Chairman William E. Kennard
Federal Communications Commission
Washington, DC 20554



Dear Mr. Chairman:

Several months ago, you asked me to meet with representatives of AT&T, Excite@Home, MindSpring, Atlanta Mayor Campbell and the FCC's Local and State Government Advisory Committee with the goal of reaching agreement on a definition of "open access" in the cable broadband environment. I am among the three of these six people you called upon who have chosen not to sign the letter being sent to you today.

In dozens of hours of conversation over the last four months, I tried to work constructively towards that objective. So did the others. The discussions were candid and sincere. I believe the participants acted in good faith at all times.

It is with regret that I advise you that what AT&T describes in the letter being sent to you today by three of the six members of the group IS NOT "Open Access."

Even so, I promised you that I would try to be flexible, and I had remained willing to endorse AT&T's "voluntary" undertaking as an important step in the right direction.

However, a few weeks ago, I reluctantly concluded that I could not sign the letter I had helped to draft, even if I had also presented a separate statement of my own views. Here is why:

- AT&T was unwilling to discuss, much less consider, several criteria which are essential to insuring that cable operators will not abuse their monopoly position to favor certain content and certain business partners. This inhibits the Internet's current role as a renewable source of constant innovation, economic growth and free expression.
- With the unexplained withdrawal of Excite@Home from the discussions, there was no longer any assurance that Excite@Home would cooperate in the planning and implementation of AT&T's commitments, or in preparing for broader access in the "post exclusivity" period.
- Widespread mischaracterization of the recent FCC staff report on broadband access, including misleading statements by a high level Commission official at a public meeting I attended three weeks ago, led me to realize that the letter could be misused to make it seem that AT&T has in fact agreed to provide "open access."

Nonetheless, there are important breakthroughs in the letter. AT&T's willingness to make its systems more available to competitors is a significant breakthrough. While I do not doubt the sincerity of those making these "voluntary" promises, the simple fact is that the high turnover of top

officials at AT&T requires that you obtain binding commitments. Accordingly, I ask that you make AT&T's compliance with these undertakings a condition of any transfer of ownership MediaOne cable systems to AT&T.

I have been inundated with queries since self-serving versions of the letter were leaked to the press. Thus, I will use this letter as a vehicle to summarize my concerns. I ask that you place this letter, along with all correspondence you receive from other of the participants, in html format on the Commission's Broadband Internet Access webpage: <http://www.fcc.gov/broadband/> I will also post this letter on Media Access Project's website: <http://www.mediaaccess.org> Interested citizens - and Commission staff - can learn more about my views on the subject *via* links to the compendium of broadband materials contained at: <http://www.nogatekeepers.org>

I would stress that I have not seen the final version of the AT&T undertakings, as I withdrew from the talks two weeks ago. Based on my knowledge of the drafting, as well as leaks which reporters have received from what they describe as knowledgeable parties, these are my comments:

1. **Although AT&T owns 58% voting control of Excite@Home, it is hiding behind an "exclusive contract" to delay introduction of broader access for up to two and a half years, and perhaps much longer.**

AT&T says it will not open its systems until it is freed of existing contractual commitments. In the case of Excite@Home, this could be at least two and a half years. AT&T has been unwilling to disclose when MediaOne's exclusivity with the RoadRunner ISP will expire; some of these agreements evidently run much longer than the Excite@Home contracts.

These contracts are in my opinion, unlawful. That aside, AT&T controls the voting stock in Excite@Home and appears to be acquiring 50% operating control of RoadRunner. It can provide access much more quickly. The failure to do so means that AT&T will be able to retain a stranglehold on the prime internet access customers for many years to come.

To call this open access is like saying that on January 1, 1984, the day AT&T divested the local phone companies, there was competition in long distance services. The Commission should not allow a new monopoly to be created as it "watchfully" waits for competition.

2. **Open access requires more than a choice of ISP's.**

Open access requires that cable operators provide competing ISP's with full access to their systems under the same terms and conditions, and at the same rates, that access is available to affiliated ISP's. An operator should not be able to restrict offerings to those which its affiliate chooses to provide.

The characteristics and benefits of open access are described in *Keeping the Information Superhighway Open for the 21st Century*, a paper to be released today by the Consumer Federation of America: <http://www.consumerfed.org/internetaccess/keeping1299.htm>

3. Requiring ISP's to use AT&T transport facilities permits content-based discrimination in favor of preferred content providers and commercial partners, and threatens to undermine the most valuable characteristics of the Internet: low entry barriers for nascent entrepreneurs, free expression and serendipitous innovation.

Throughout the discussions I attended, AT&T was unwilling to agree to let ISP's have access to connections at the cable head end. It instead insisted that ISP's use AT&T transport facilities all the way to the Internet backbone. The absence of an affirmative statement that ISP's can connect at the head end is profoundly anti-competitive, and utterly at odds with what the Commission expects of all other telecommunications services. It particularly penalizes ISP's which own, or have long-term leases for, transport facilities, and which may have built their own regional nodes.

Professors Lawrence Lessig (Harvard Law School) and Mark Lemley (University of Texas Law School) have described how the closed cable television model is antithetical to the core characteristics of the Internet as we know it today in comments recently filed in the AT&T/MediaOne merger proceeding: <http://cyber.law.harvard.edu/works/lessig/MB.html>

Professor Jerome Saltzer of MIT has described five kinds of content control in his newly-published paper <http://web.mit.edu/Saltzer/www/publications/openaccess.html>

Free expression includes the right not to receive access to unwanted material. Your strong support for the television v-chip ought to impel you to examine how closed access does not permit parents to use effective "server side" filtering by subscribing to "family friendly" ISP's. This problem is discussed in the brief Media Access Project co-authored in the Ninth Circuit Portland case: <http://www.mediaaccess.org/filings/index.html#anchor44776>

3. AT&T has abandoned its claims that it is not technologically feasible for cable operators to provide access to multiple ISP's.

Even as technologists at the highest levels of AT&T and Excite@Home were representing to me that there is no technological impediment to providing citizens with access to multiple ISP's, their lobbyists have continued to argue the contrary position before numerous state and local legislative and regulatory bodies. Indeed, a significant factor in my decision to withdraw from the talks you asked me to attend was the claim contained in an October 15, 1999 article by Excite@Home's General Counsel that "The technology simply does not yet exist to allow multiple ISPs to share a coaxial cable on a commercial basis."¹

Since AT&T says it can provide this access for Excite@Home customers on AT&T cable

¹Daniel Pine, *Let the Feds Regulate*, at <http://www.thestandard.com/article/display/0,1151,7017,00.html>
A forceful rebuttal can be found in a two part article, Professor Lawrence Lessig, *Cable Blackmail*, at <http://www.thestandard.com/article/0,1153,5198,00.html>
and *The Cable Debate, Part II*, at <http://www.thestandard.com/article/0,1151,5621,00.html>

systems and RoadRunner customers on MediaOne cable systems, all the other Excite@Home and RoadRunner partners should be able to do so as well.

4. Open Access brings a better financial return for cable operators.

Competitive ISP's will generate more revenue for cable operators. They can market to, and provide better customer service for, citizens who might otherwise be left on the wrong side of the digital divide. For example, Cuban-Americans have different needs than Mexican-Americans and citizens of Puerto Rico. Cultural impediments may mean that a single ISP with one Spanish language marketing staff will miss many of these new customers, leaving others outside the digital environment.

A thoughtful and important discussion of the how open access is more profitable for cable operators and for the economy as a whole is contained in a newly-released paper by Professor Jeffrey McKie-Mason of the University of Michigan, at <http://www.opennetcoalition.org/press/jmmwhi.pdf>

5. AT&T has been unwilling to make a written commitment that customers can purchase Internet access at commercially reasonable rates without having to buy a bundled "package."

Failure to permit independent purchase of Internet services threatens to expand the digital divide.

My Request: Open-Minded and Objective Reevaluation of Voluntary Access Plans

In accepting your request to meet with AT&T and others, I placed at risk my relationships with my clients and my professional colleagues. I have had several very emotional conversations in the two days since word of my involvement was leaked to the press, and one client has directly accused me of a breach of trust.

I knew this would be difficult, but I was willing to take the risk. I am proud that I tried to advance the public's agenda, and I am confident that I will be able to convince my colleagues that I did the right thing.

This experience impels me to make a request of you. I ask that you undertake a candid and zero-based review of what AT&T and, more importantly, other cable operators and their trade associations, say about open access in the days and weeks to come. This may require you to do something I know does not always come easily to you - to change your mind.

Depending on what you find, I ask you to reevaluate your unwillingness to use the Commission's legal authority to require non-discrimination in providing broadband cable internet services. For example, if one or more of the major cable operators remain unwilling to agree that affording access to multiple ISP's at the cable head end is not technologically feasible, or that they are unwilling to make binding commitments not to abuse caching and other quality of service standards to favor certain content at the expense of free expression and economic growth, you need to ask yourself if marketplace forces alone can influence those monopoly cable operators to follow a different course.